

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re
JANNY CASTILLO,

Debtor._____/

No. 00-42039 J7
Adv. No. 02-4017 AJ

JANNY CASTILLO,

Plaintiff,
vs.
ED FUND and EDUCATIONAL
CREDIT MANAGEMENT CORPORATION,

Defendants._____/

DECISION DENYING MOTION TO ALTER OR AMEND JUDGMENT

Defendant Educational Credit Management Corporation ("ECMC")
has moved to alter or amend this court's Judgment filed herein July
3, 2002. The motion will be denied.

As the court noted in its Decision After Trial (the "Decision")
filed July 3, 2002, this adversary proceeding is governed by In re
Pena, 155 F.3d 1108 (9th Cir. 1998), wherein the Ninth Circuit
adopted a three-pronged test to determine whether excepting a
student loan from a debtor's bankruptcy discharge would constitute

1 an "undue hardship" to the debtor within the meaning of Bankruptcy
2 Code § 523(a)(8). The gravamen of ECMC's argument now before the
3 court relates to the first Pena prong, which is whether the debtor
4 can: "maintain, based on current income and expenses, a 'minimal'
5 standard of living for herself and her dependents if forced to repay
6 the loans." Pena, 155 F.3d at 1111 (quoting Brunner, 831 F.2d at
7 396).

8 In essence, ECMC argues that the Ford Program mentioned on page
9 4 of the Decision is a "repayment" program, not a "forbearance"
10 program, the label used by the court in the Decision. Therefore,
11 argues ECMC, if Castillo were forced to repay the loan, under the
12 facts of this case she would be forced to repay nothing, based on
13 her current income and expenses. And because ECMC has shown that
14 Castillo is indeed able to "repay" nothing under the Ford
15 "repayment" program without impairment of her admittedly minimal
16 standard of living, ECMC contends that she cannot meet the first
17 Pena prong.

18 Whether ECMC's argument is labeled as "semantic", "circular",
19 or merely "inapposite," the result is the same: the motion is
20 without merit and must be denied. The first prong of the Pena test
21 assumes money changing hands. It does not assume a loan, repayment
22 of which is payment of nothing. See Decision, pp. 4 - 6.

23 The court will therefore issue its order denying ECMC's motion.

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Dated: August 19, 2002

Edward D. Jellen
United States Bankruptcy Judge